



SACHI A. HAMAI
Interim Chief Executive Officer

County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

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From: Sachi A. Hamai
Interim Chief Executive Officer

SACRAMENTO UPDATE - ELECTIONS AND VOTING RIGHTS LEGISLATION

Executive Summary

This memorandum contains an overview of five bills of interest to the County related to election procedures and voting rights, including the following:

- **AB 44 (Mullin).** This measure would trigger an automatic recount if the difference in the number of votes received by each candidate is less than or equal to 0.1 percent.
- **AB 182 (Alejo).** This measure would prohibit a district-based election in a political subdivision, if a district-based election would impair the ability of a protected class to elect candidates of its choice or otherwise influence the outcome of the election.
- **AB 254 (Hernández).** This measure would eliminate the established election dates in March and April for all local jurisdictions.
- **AB 1301 (Jones-Sawyer).** This measure would require State pre-clearance of local election laws.
- **SB 163 (Hertzberg).** This measure would implement universal vote-by-mail ballots.

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Overview

In response to historically low voter participation statewide in 2014, a number of members of the Legislature announced their intent to pursue legislation to address low voter turnout and both houses have since introduced several measures. Many legislators have also expressed concern regarding voter turnout in Los Angeles County, which was lower than the average statewide.

On March 25, 2015, the Senate Elections and Constitutional Amendment Committee and the Assembly Elections and Redistricting Committee convened to investigate and discuss the causes and ramifications of California's historically low voter turnout during the 2014 Primary and General Elections. The Committees noted that low voter turnout causes large portions of California's electorate to be underrepresented in the outcome of elections within regions and statewide. A representative for Secretary of State Alex Padilla expressed the Secretary's support for policies to increase voter turnout, including: establishing automatic voter registration; modernizing the State's voting systems; providing new options for voting; increasing advertisements and establishing community partnerships to increase voter outreach; and strengthening civic education to emphasize the importance of voter participation in elections.

Below is an overview of County interest legislation aimed at increasing voter turnout and expanding voting rights protections.

Legislation of County Interest

AB 44 (Mullin), which was introduced on December 1, 2014, would require the Secretary of State to order an automatic manual recount of all votes cast for a statewide office, President of the United States, or a State ballot measure if the difference in the number of votes received by each candidate is less than or equal to 0.1 percent.

Under current law, a voter may request a recount of the votes cast in an election, but a voter who makes such a request must pay the costs of the recount. Election officials may order a recount if they reasonably believe the ballots have been miscounted. AB 44 would replace the current recount process with an automatic manual recount triggered by the vote margin, ordered by the Secretary of State, and conducted by the County. As proposed, the County would be able to seek reimbursement from the State for the cost of the recount.

The Registrar-Recorder/County Clerk (RR/CC) notes that this bill would challenge the County's election capacity and conflict with existing recount processes unaffected by this legislation. The Department has met with Assemblymember Mullin to discuss amending AB 44 to address these concerns.

Currently, there is no registered support or opposition to AB 44. The bill has been referred to the Assembly Elections and Redistricting Committee. A hearing date has not been set.

AB 182 (Alejo), which as introduced on January 26, 2015, would prohibit a district-based election in a political subdivision, including counties and cities, if the election would impair the ability of a protected class to elect candidates of its choice or otherwise influence the outcome of the election.

The California Voting Rights Act of 2001 (CVRA) prohibits the use of an at-large election in a political subdivision if it would impair the ability of a protected class to elect candidates of its choice or otherwise influence the election outcome. The CVRA also provides voting members of a protected class the option of bringing a claim in superior court to enforce its provisions. A voter who prevails in such a claim may be awarded reasonable litigation costs and attorney's fees. Under the CVRA, a court may impose district-based elections or other appropriate remedies.

AB 182 would expand the CVRA to permit voting members of a protected class to challenge a district-based election system in superior court on the basis that it impairs a protected class from electing candidates of its choice or otherwise influences the outcome.

AB 182 would provide voters of a protected class the following remedies:

- The court may impose an effective district-based elections system that provides the protected class the opportunity to elect candidates of its choice from single-member districts;
- If an effective district-based elections system is not possible, then the court may impose a single-member district-based elections system that allows the protected class to join in a coalition of two or more protected classes of voters to elect candidates of their choice; or

- If the remedies of a district-based elections system or a single-member district-based election system are not legally viable, then the court may impose other remedies, including increasing the size of the governing body at issue, issuing an injunction to delay the election, or requiring an election to be held concurrently with a statewide election.

Similar to the CVRA, AB 182 would award reasonable litigation costs and attorney's fees to a voter who successfully challenges a district-based elections system in court.

The Registrar-Recorder/County Clerk indicates that the County's voting system would be negatively impacted by this legislation if the County was ordered by the court to add a jurisdiction to an even year statewide election because the County is currently experiencing voting system and ballot capacity issues.

This bill is identical to SB 1365 (Padilla), which Governor Brown vetoed in September 2014. In his veto message, the Governor indicated that SB 1365 was unnecessary because the Federal Voting Rights Act and the California Voting Rights Act already provide adequate safeguards to ensure that the voting strength of minority communities is not diluted.

AB 182 has been referred to the Assembly Elections and Redistricting Committee and the Judiciary Committee. A hearing date has not been set.

AB 254 (Hernández), which as amended on March 8, 2015, would limit election dates to June and November and declare that increasing voter turnout at local elections and promoting the fundamental right to vote are matters of statewide concern.

Current law provides established dates for State, county, municipal, district, and school district elections in March of odd-numbered years, April of even-numbered years, and June and November of each year. Chartered cities or chartered counties are not currently required to hold elections on an established election date. AB 254 would limit established election dates to the first Tuesday, after the first Monday, in June and to the first Tuesday, after the first Monday, in November for all local jurisdictions. Exceptions would be allowed for: a special election called by the Governor; a special election called by a local government entity; specified school board elections; a county, municipal, district, or school district initiative, referendum or recall election; and any election conducted solely by mailed ballots.

The Registrar-Recorder/County Clerk indicates that this bill would result in increased requests from cities and special districts to consolidate their elections onto the County's ballots in even-year elections. Currently, a Board-adopted, RR/CC policy limits even-year election consolidation based on the capacity of the County's legacy voting systems. The RR/CC anticipates that the County's ballot capacity will increase by the year 2020 with the completion of the County's Voting Systems Modernization Project. Therefore, if passage of AB 254 becomes likely, the RR/CC recommends that AB 254 be amended to delay its implementation until the 2020 election cycle.

The City Clerk's Association of California opposes this bill. Currently, there is no registered support or opposition to AB 254. The bill is scheduled to be heard in the Assembly Elections and Redistricting Committee on March 25, 2015.

AB 1301 (Jones-Sawyer), which as introduced on February 27, 2015, would subject specified political subdivisions, including counties, cities, and school districts, to State pre-clearance of changes to voting-related laws and procedures, including any changes to at-large elections, jurisdiction boundaries, redistricting, voting locations, and/or multilingual voting materials.

On June 25, 2013, in a 5 to 4 decision (Shelby County v. Holder), the U.S. Supreme Court struck down as unconstitutional Section 4(b) of the Voting Rights Act, which determines which jurisdictions are subject to Federal pre-clearance for any changes to laws and practices affecting voting so as to ensure that the changes do not have the purpose of denying or abridging the right to vote on account of race or color. In California, there were three counties, Kings, Monterey and Yuba, that had been subject to Federal pre-clearance under Section 4(b) of the Voting Rights Act.

AB 1301 would establish a State pre-clearance system for any changes to voting-related laws, policies and procedures proposed by a political subdivision with two or more racial or ethnic groups that each represent at least 20 percent of the citizen voting-age population in the political subdivision. Specifically, this measure would require that the governing body of a covered political subdivision submit any changes to voting-related laws, regulations, or policies to the Secretary of State for approval, including those that would make changes to:

- An at-large method of election that adds offices elected at-large or converts offices elected by single-member districts to one or more at-large or multi-member districts;

- The boundaries of an electoral jurisdiction or a series of changes within a year to the boundaries of an electoral jurisdiction that reduces the size of the citizen voting-age population of a single protected class by 5 or more percent;
- Redistricting that alters the boundaries of an electoral jurisdiction in which a single protected class has experienced a population increase of at least 25,000 citizens or 20 percent of the citizen voting-age population over the preceding decade;
- Voting locations that reduces, consolidates, or relocates one or more voting locations, including an early, absentee, or election-day voting location, and results in a net loss, on a per voter basis, of specified voting locations; and
- Multilingual voting materials that reduces the voting materials available in languages other than English, or alters the manner in which the materials are provided, if no similar change occurs in English materials.

AB 1301 provides that the Secretary of State (SOS) would issue a written decision within 60 days of a pre-clearance request. Additionally, the bill further provides that:

- The SOS may consider and attempt to accommodate a request for an expedited review if the political subdivision has a demonstrated need to implement the proposed change before the end of the 60-day review period;
- The governing body of the political subdivision bears the burden of establishing, by objective and compelling evidence, that the proposed change is not likely to result in a discriminatory effect; and
- If the SOS denies a request, the political subdivision may seek a review of the decision by means of an action filed in the Superior Court of Sacramento.

Finally, this measure would allow the Attorney General or a registered voter who resides in the political subdivision at issue to file an action in superior court to compel the political subdivision to comply with this bill.

The Registrar-Recorder/County Clerk is currently analyzing AB 1301 in coordination with the California Association of Clerks and Election Officials, and will provide an update when a detailed analysis of the bill is completed.

County Counsel indicates that AB 1301 would place a substantial burden on the County and all local jurisdictions to comply with State pre-clearance. Such a burden would be met by a showing of objective and compelling evidence that voting related laws and policies are not discriminatory. County Counsel indicates that because AB 1301 does not define what evidence would be considered objective and compelling, a court hearing a claim under the bill's provisions would have an unclear standard of proof by which to judge whether a violation has occurred. Unclear standards of proof allow the court great latitude to decide cases, which can increase the difficulty and associated costs of litigation. The bill's text is generally ambiguous, according to County Counsel, which could result in costly litigation, including suits against cities and school districts for which the County administers elections.

County Counsel further notes that the provisions of AB 1301 could be broadly interpreted to grant the Attorney General or a qualifying registered voter standing to challenge any of the County's current or future voting policies and procedures. Separately, they report that under this measure's potentially broadest interpretation, the County's most recent redistricting may be challenged under this bill. County Counsel also relates that AB 1301 may further provide the Secretary of State with broad authority to block any local law, regulation, or policy that has a discriminatory effect on elections, even if such a law is not on the subject of elections or voting.

Currently, there is no registered support or opposition to AB 1301. The bill has been referred to the Assembly Elections and Redistricting Committee. A hearing date has not been set.

SB 163 (Hertzberg), which as introduced February 4, 2015, would require all counties to issue vote-by-mail ballots to all registered voters on the county voter rolls for statewide primary, special, and general elections. Under SB 163, all registered voters would receive a vote-by-mail ballot before the election while retaining the option to go to their designated polling place and cast a ballot in person.

Under current law, registered voters are entitled to a vote-by-mail ballot if an application for a vote-by-mail ballot is submitted in writing to election officials a certain number of days before an election.

The Registrar-Recorder/County Clerk notes that this bill would significantly change County election operations and appears to be modeled after a recent, similar change in the State of Colorado. The RR/CC will continue to analyze and monitor SB 163.

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Currently, there is no registered support or opposition to SB 163. The bill has been referred to the Senate Elections and Constitutional Amendments Committee. A hearing date has not been set.

This office, the Registrar-Recorder/County Clerk, and County Counsel will continue to review these measures to determine the potential impact to the County.

We will continue to keep you advised.

SAH:JJ:MR
VE:DE:ma

c: All Department Heads
Legislative Strategist